

## REMARKS/ARGUMENTS

Claims 1-42 are pending in the present application. The Examiner has rejected claims 1-42. Applicant respectfully requests reconsideration of pending claims 1-42.

The Examiner has rejected claims 1-42 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,560,654 to Fedyk et al. Applicant respectfully disagrees. Applicant reiterates Applicant's previously presented arguments. Moreover, Applicant notes the Examiner's Response to Arguments. The Examiner states that the term control plane congestion is interpreted broadly and that part of the IP congestion detected can be considered control plane congestion. The Examiner further states that the claims are read in light of the specification but that limitations from the specification are not read into the claims. Applicant respectfully disagrees. Applicant notes MPEP § 2111, which begins, "During patent examination, the pending claims must be 'given their broadest reasonable interpretation consistent with the specification.' *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)." Applicant submits that the Examiner's interpretation is facially inconsistent with page 14, lines 16-18, of the specification. Moreover, Applicant submits that the Examiner has not identified any teachings in Fedyk et al. of "control plane congestion" and that the teachings of col. 5, lines 13-30, of Fedyk et al., as cited by the Examiner, do not disclose "control plane congestion."

The Examiner further states that the term routing plane is interpreted broadly and that any congestion detected can be interpreted as using some form of routing plane. Applicant submits that such an interpretation impermissibly completely ignores the presence of the term "routing plane." Moreover, Applicant submits that the Examiner has not identified any teachings in Fedyk et al. of "routing plane" and that the teachings of col. 5, lines 13-60, of Fedyk et al., as cited by the Examiner, do not disclose "routing plane." The Examiner states the specification and drawings do not appear to describe a specific hierarchy for the various planes claimed by the applicant. Applicant notes that it is the claims that the Examiner has rejected, not the specification and drawings, and further notes that Applicant does not recite a "specific hierarchy" in the claims.

The Examiner also states that any congestion notification can be considered to occur on a signaling plane. Applicant submits that such an interpretation impermissibly completely ignores the presence of the term "signaling plane." Moreover, Applicant submits that the Examiner has not

identified any teachings in Fedyk et al. of “signaling plane” and that the teachings of col. 5, lines 13-60, of Fedyk et al., as cited by the Examiner, do not disclose “signaling plane.”


The Examiner states that the claims do not say that the amount of reduction in control traffic is based proportionally on the congestion level therefore any of the reduction shown in Figure 4 teaches claim 31 as interpreted broadly. Applicant respectfully disagrees. Applicant submits that Figure 4 does not appear to disclose any reduction, but merely refers to generating and transmitting a feedback message. Moreover, Applicant submits that Figure 4 fails to disclose “wherein the congestion notification includes a congestion level” and “wherein an amount of reduction in control traffic to the network element is based on the congestion level,” as recited in claim 31.

Applicant further submits that the Examiner’s Response to Arguments fails to address other arguments previously presented by Applicant. For example, Applicant notes that, regarding claim 36, Applicant previously stated that Applicant can find no teaching in Fedyk et al. that “the predetermined time period is based on the level of congestion.” In col. 6, lines 20-22, as cited by the Examiner, Fedyk et al. state, “The source node 12, in this case, may transmit the data upon expiration of a time interval, or upon receipt of some other message.” However, Applicant submits such teaching fails to disclose the subject matter of either claim 36 or claim 35 from which claim 36 depends, as claim 35 recites, “...remove the congestion information from the table after a predetermined time period.”

In conclusion, for the foregoing reasons, Applicant submits that Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

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Date

  
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